

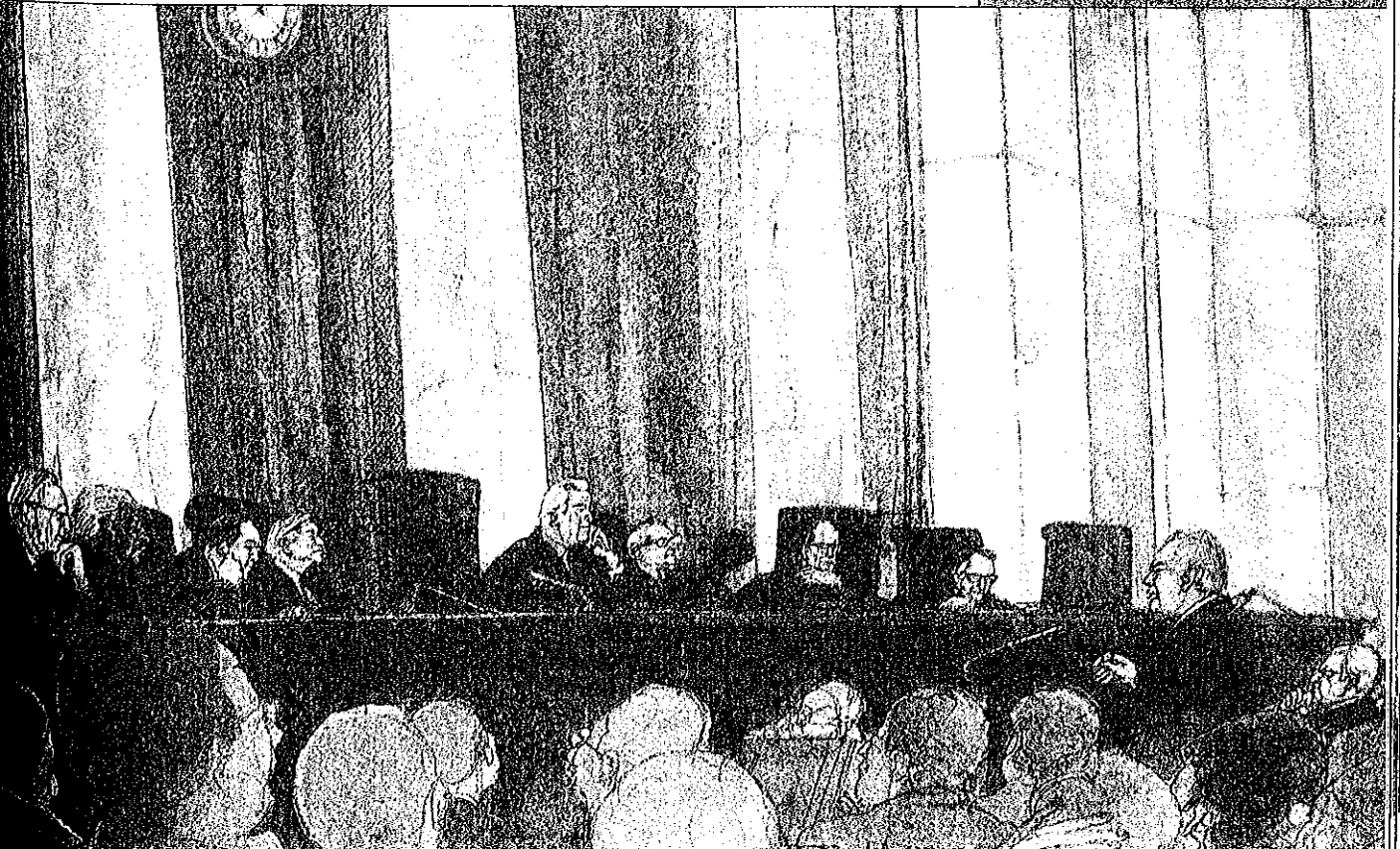
How does the U.S. Supreme Court use the power of judicial review?

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LESSON PURPOSE

Even in our nation's earliest years, people such as Alexander Hamilton and Thomas Jefferson disagreed about exactly what the words in the Constitution mean. Who should decide which reading of the Constitution is correct? This lesson explains how the U.S. Supreme Court established its power to make such decisions. This power of the Court is called the power of judicial review. This power is not mentioned in the Constitution.

When you finish this lesson, you should be able to explain what is meant by judicial review. You should also be able to discuss how the U.S. Supreme Court established its power of judicial review in one of the most important cases in our nation's history.



TERMS TO UNDERSTAND



judicial review

Marbury v. Madison

null and void

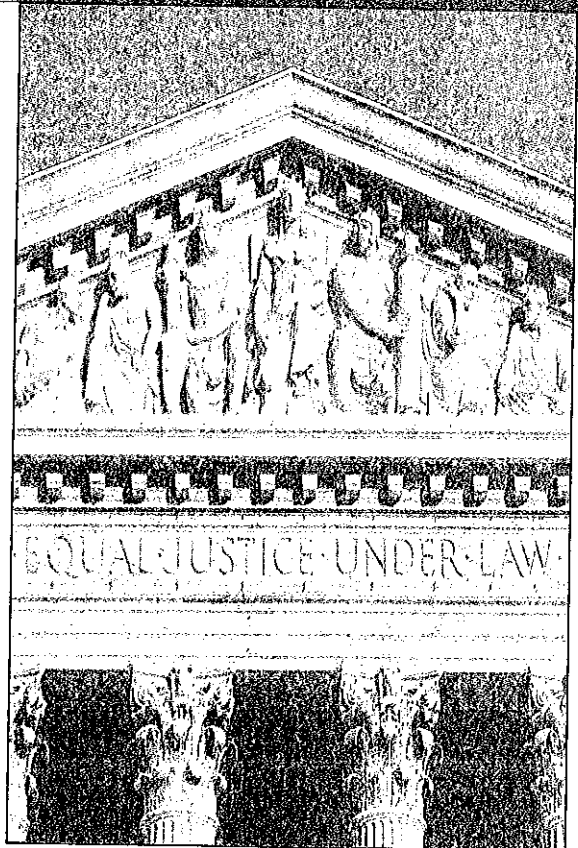
opinion of the Court

What is judicial review?

Judicial review is the power of the courts to decide whether laws and actions of government are allowed under the Constitution. When a court decides that a law or action is not allowed, it orders that the law or action be considered null and void. A law that is **null and void** may not be enforced. Such a law is considered unconstitutional and not acceptable as a law at all.

How does judicial review apply to laws passed by state governments?

The Framers wanted to be sure that the states obeyed the laws of the federal government. So, in Article VI of the Constitution they said that the U.S. Constitution, federal laws, and treaties are the supreme law of the land. As we discussed in Lessons 16 and 17, this is the supremacy clause. The Constitution, the laws passed by Congress, and treaties are the nation's highest laws and must be obeyed by the states. If state laws conflict with those of the federal government, the U.S. Supreme Court can order that the state laws not be enforced.



*What is the power of judicial review?
Are decisions of the Supreme Court
binding on the states?*

The U.S. Supreme Court first used its power of judicial review over state governments in 1796. After the Revolutionary War the United States signed a peace treaty with Great Britain. As part of this treaty, Americans agreed to pay all debts that they owed to British citizens. The

state of Virginia passed a law that canceled all debts that its citizens owed to the British. Because this law violated the peace treaty, the Supreme Court ruled that the law could not be enforced. The citizens of Virginia would have to pay their debts.

How did the U.S. Supreme Court decide the case of *Marbury v. Madison*?

The U.S. Supreme Court established its power of judicial review over the other branches of the federal government in one of the most famous cases in our history. This case, *Marbury v. Madison*, was decided in 1803.


During the last weeks that John Adams was president, he appointed a number of people to office. There had not been enough time to deliver the proper papers to all the appointees before the next president, Thomas Jefferson, took office. Without the proper papers, the appointees could not take the jobs that Adams gave them. When Jefferson did take office, he ordered his secretary of state, James Madison, not to deliver the appointments that were left.

Does the U.S. Supreme Court have the power of judicial review over acts of the federal government?

The Framers clearly meant that the U.S. Supreme Court should have the power of judicial review over acts of the state governments. The Constitution does not state that the U.S. Supreme Court has the power of judicial review over the legislative and executive branches of the federal government.

British claims under the 14th article, distinguished into classes, including interest to different dates within the year 1798.

for interest during the war alone	£ 120,645- 11- 1 1/2
for payments into the Treasuries, Loan offices &c.	176,795- 0- 6 1/2
on acc ^t of impediments under the instalment laws of S. Carolina	337,868- 2- 0
for alleged unlawful decisions of courts	24,658- 4- 3 1/4
by firms in part citizens of the U.S.	162,803- 12- 4 3/4
debts due from states late provinces	4,839- 14- 0
all description of refugees except N. Carolina	783,182- 4- 2 1/4
on account of debts discharged ^{disappointed} in paper money	205,795- 15- 5 1/2
Proprietary debts	296,775- 13- 8
Legal impediments generally	3,560,585- 10- 4 1/2
24,809,969.34 =	5,638,629- 8- 1 1/2



This is a list of debts owed to the British in 1798. It was compiled by Thomas Jefferson. How did the Supreme Court use its power of judicial review to settle the matter of Virginia's British debt? Can you find where the Constitution is mentioned in this note?

Should the U.S. Supreme Court have the power of judicial review over acts of Congress?

Imagine that you must decide whether the U.S. Supreme Court should have the power of judicial review over laws passed by Congress. Work with a group of three to five students. Read the two opinions below. Consider each position and the possible results of each position. Use the Guideline Questions to help you decide which position your group would support.

OPINION 1

Give the U.S. Supreme Court the power to declare that a law passed by Congress is unconstitutional.

Possible Result Some laws, even though they were passed by a majority of representatives in Congress—people elected by citizens to represent their interests—would not be obeyed or enforced.

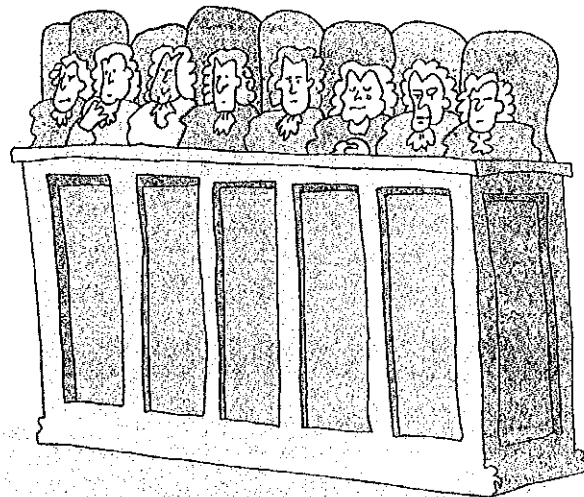
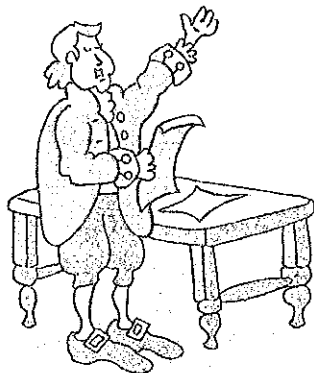
OPINION 2

Deny the U.S. Supreme Court the power to declare laws passed by Congress unconstitutional.

Possible Result All laws passed by a majority of representatives in Congress—people elected by citizens to represent their interests—must be obeyed or enforced.

GUIDELINE QUESTIONS

- ❶ How is each position related to the principles of representative government and majority rule?
- ❷ Is one position more democratic than the other? Why or why not?
- ❸ What effect might each position have on the basic rights of the individual?
- ❹ What effect would each position have on protecting the minority from the whims of the majority?





*William Marbury.
How did the
court's ruling
limit the powers
of Congress?*

One person who did not receive his appointment was William Marbury. Marbury believed that he was entitled to have the job. Marbury took his case directly to the U.S. Supreme Court because the Judiciary Act of 1789 stated he had that right.

Chief Justice John Marshall wrote the opinion for the U.S. Supreme Court. The opinion of the Court is the Court's decision and the reasoning behind the decision. The Court ruled that Marbury did have a right to his job. But they also said that the part of the Judiciary Act that gave Marbury the right to bring his case directly to the U.S. Supreme Court was unconstitutional.

The Constitution clearly limits the cases that can go directly to the U.S. Supreme Court without being first heard in a lower court. Marbury's case did not fit within these limits. Congress had changed the Constitution when it passed that part of the Judiciary Act. Congress by itself does not have the power to change the Constitution. So, the section of the Judiciary Act that increased the Court's power was ruled unconstitutional.

By declaring part of a law passed by Congress unconstitutional, the U.S. Supreme Court assumed the power of judicial review over the legislative and executive branches. Justice Marshall argued that the people of this nation had adopted the Constitution as the supreme law of the land and consented to be governed by its rules.

These rules include important limits on the powers of Congress. When Congress violates those limitations, it has violated the will of the people.

Marshall said that if the U.S. Supreme Court could not strike down such acts, there would be no effective way to enforce the constitutional limits on the powers of Congress. Its powers would be unlimited, and we would no longer have a constitutional government. Since the decision of *Marbury v. Madison*, the U.S. Supreme Court has exercised the power of judicial review over the federal government.



*What was Chief Justice John Marshall's argument
for the Supreme Court's power of judicial review?*

LESSON REVIEW

- ❶ What is judicial review?
- ❷ How does judicial review apply to the laws passed by state governments?
- ❸ What was the case of *Marbury v. Madison*? How did the U.S. Supreme Court decide this case?
- ❹ Why was *Marbury v. Madison* such an important case?
- ❺ How does judicial review protect the rights of the people?
- ❻ How might judicial review override the will of the majority?

ACTIVITIES

- ❶ In the history of our country, there have been several important justices on the U.S. Supreme Court. Learn more about one of the justices listed below. Share what you learned with your class.
 - Oliver Wendell Holmes Jr.
 - John Jay
 - John Marshall
 - Thurgood Marshall
 - Roger B. Taney
 - Earl Warren
- ❷ Find an article in the newspaper that explains a case or constitutional issue before the U.S. Supreme Court. Be prepared to explain the article to your class.
- ❸ With your teacher, invite an attorney or a judge to come to your classroom to discuss how our court system works. Prepare questions you want to ask the guest during the visit.
- ❹ Almost every trial in the United States is open to the public. With your teacher, visit your local courthouse. Talk with one of the judges. Observe a trial. This will allow you to see for yourself how our justice system operates.